

# **EXHIBIT E**

## **PART 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TINA LINDQUIST, )

Plaintiff, )

vs. ) No. 04-249E

HEIM, L.P., )

Defendants. )

ORIGINAL

The video deposition of MATTHEW  
ULMENSTEIN, called for examination pursuant to  
the Rules of Civil Procedure for the United  
States District Courts pertaining to the taking  
of depositions, taken before Patricia L.  
Wangler, a notary public within and for the  
County of DuPage and State of Illinois, at  
33 North LaSalle Street, Illinois, on the  
6th day of April, 2006, at the hour of  
9:00 o'clock a.m.

Reported By: Patricia L. Wangler, CSR

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4       April 10, 2006  
5       Mr. Dallas W. Hartman  
6       2815 Wilmington Road  
7       New Castle, Pennsylvania 16105

8       IN RE: Lindquist v. Heim  
9       COURT NUMBER: 04-249E  
10      DATE TAKEN: 4-6-06  
11      DEPONENT: Matthew Ulmenstein

12      Dear Mr. Hartman,  
13      Enclosed is the deposition transcript for the  
14      aforementioned deponent in the above-entitled  
15      cause. Also enclosed are additional signature  
16      pages, if applicable, and errata sheets.

17      Per your agreement to secure signature, please  
18      submit the transcript to the deponent for review  
19      and signature. All changes or corrections must  
20      be made on the errata sheets, not on the  
21      transcript itself. All errata sheets should be  
22      signed and all signature pages need to be signed  
23      and notarized.

24      After the deponent has completed the above,  
25      please return all signature pages and errata  
26      sheets to me at the above address, and I will  
27      handle distribution to the respective parties.  
28      If you have any questions, please call me at the  
29      phone number below.

30      Sincerely,  
31      Margaret Setina                   Patricia L. Wangler  
32      Signature Department           Court Reporter

33      cc: Mr. Robinson.

122

1 APPEARANCES:

2 DALLAS W. HARTMAN, P.C., by

3 MR. DALLAS W. HARTMAN

4 2815 Wilmington Road

5 New Castle, Pennsylvania 16105

6 (724) 652-4081

7 Representing the Plaintiff,

8

9 MEYER, DARRAGH, BUCKLER, BEBENEK &

10 ECK, P.L.L.C., by

11 PAUL R. ROBINSON

12 U.S. Steel Tower, Suite 4850

13 600 Grant Street

14 Pittsburgh, PA 15219

15 (412) 261-6600

16 Representing the Defendant.

17

18 ALSO PRESENT:

19 MS. KAROLINA TESARSKI, Videographer.

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# I N D E X

WITNESS	EXAMINATION
MATTHEW ULMENSTEIN	
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# E X H I B I T S

NUMBER	MARKED FOR ID
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B	112

1 THE VIDEOGRAPHER: My name is Karolina  
2 Tesarski, legal video specialist with  
3 McCorkle Court Reporters located at  
4 200 North LaSalle Street, Suite 300, Chicago,  
5 Illinois, 60601.

6 I am the camera operator on  
7 April 6, 2006, for the videotaping of the  
8 deposition of Matthew Ulmenstein being taken at  
9 33 North LaSalle, Chicago, Illinois, at the time  
10 of 10:27 a.m., in the matter of Tina Lindquist,  
11 Plaintiff, versus Heim, L.P., Defendant, filed  
12 in the United States District Court,  
13 Western District of Pennsylvania, Case No. 04249E.

14 Will counsel please identify themselves  
15 for the record beginning with plaintiff's  
16 counsel.

17 MR. HARTMAN: My name is Dallas Hartman. I  
18 represent the Plaintiff, Tina Lindquist.

19 MR. ROBINSON: And my name is Paul Robinson,  
20 and I represent the Defendant, Heim, L.P.

21 THE VIDEOGRAPHER: Will the reporter please  
22 identify yourself and swear in the witness.

23 THE COURT REPORTER: My name is Patti  
24 Wangler, McCorkle Court Reporters.

1 Will you raise your right hand please.

2 (Witness sworn.)

3 MATTHEW ULMENSTEIN,

4 called as a witness herein, having been first  
5 duly sworn, was examined and testified as  
6 follows:

7 EXAMINATION

8 BY MR. ROBINSON:

9 Q. Sir, please pronounce your last name  
10 for me so I can make sure I say it correctly.

11 A. Ulmenstein.

12 Q. Ulmenstein. Mr. Ulmenstein, we have  
13 met very briefly before we began this  
14 deposition. My name is Paul Robinson. I  
15 represent Heim, L.P., a manufacturer of press  
16 brakes that has been sued by Tina Lindquist as a  
17 result of an accident that occurred up in Corry,  
18 Pennsylvania, near Erie, PA, on  
19 September 25th of 2002.

20 Have you ever been to Corry,  
21 Pennsylvania, or Erie, Pennsylvania?

22 A. I don't believe so.

23 Q. Do you know where it is?

24 A. I have a good idea.

1 Q. Where do you understand those locations  
2 to be?

3 A. I understand them to be in western  
4 Pennsylvania.

5 Q. Have you ever met Tina Lindquist?

6 A. I have.

7 Q. And where did you meet Tina Lindquist?

8 A. In Dallas Hartman's office.

9 Q. And when was that?

10 A. That was October I believe.

11 Q. October of 2005 I am assuming?

12 A. Yes.

13 Q. And who was present during that  
14 meeting?

15 A. I think Dallas, Tina Lindquist,  
16 Professor Barnett, myself and perhaps there were  
17 some other people from Dallas' office. I am not  
18 certain.

19 Q. And how long -- did you have a chance  
20 to talk with Miss Lindquist?

21 A. I did.

22 Q. And how long of a time did you have to  
23 talk with her?

24 A. She was in the room with us for perhaps

1 15 minutes.

2 Q. Did you interview her?

3 A. No.

4 Q. Did Professor Barnett interview her?

5 A. No, there was no formal interview. A  
6 few questions might have been asked, but I'm --  
7 I can't really recall.

8 Q. Have you brought your file with you  
9 here today?

10 A. I have not.

11 Q. And why not? We had specifically  
12 requested that you do so in the notice of  
13 deposition.

14 MR. HARTMAN: Paul, we provided you --  
15 excuse me, but for the record, Paul, we provided  
16 you with the entire file prior to the  
17 deposition.

18 MR. ROBINSON: That's a copy. I asked for  
19 the original file.

20 BY MR. ROBINSON:

21 Q. My question is why didn't you bring a  
22 copy of the original file as requested of you in  
23 the official notice of deposition?

24 A. For one I never received an official

1 notice deposition.

2 Q. Did Mr. Hartman not give you a copy of  
3 that?

4 A. I don't know how it got misdirected,  
5 but I didn't receive it. And I also thought the  
6 a copy of the file was sufficient. I had no  
7 idea.

8 Q. Were you told about -- you just said  
9 you had no idea that you were to bring it and  
10 you thought a copy of it was sufficient, so did  
11 you have a conversation with someone about  
12 bringing the original or bringing a copy?

13 A. No.

14 Q. Then why did you -- why did you testify  
15 that you thought it was sufficient that we were  
16 provided with a copy if you didn't even know  
17 about the request to bring the original with  
18 you?

19 A. Because I have provided copies or got  
20 the file ready to go with Professor Barnett on  
21 other cases.

22 Q. Where is the original file?

23 A. The original file I believe to be at  
24 Triodyne right now.

1 MR. ROBINSON: Okay. Just so we are clear  
2 Mr. Barnett has also been requested to bring the  
3 original file, not a copy, and we would expect  
4 him to at least comply with the notice of  
5 deposition that compelled him and Mr. Ulmenstein  
6 to bring the original file.

7 MR. HARTMAN: Paul, we talked to you and we  
8 provided you a complete copy of the entire file  
9 as per your request.

10 You never made an indication to us that  
11 you wanted us to do anything other than provide  
12 you with a complete copy of the file, nor did  
13 you indicate to us at any time that it was not  
14 sufficient that we provided you a complete copy  
15 of the file.

16 In fact, our offices received numerous  
17 correspondence from you over the past few days  
18 asking for documents and items outside of the  
19 file which we provided you with, therefore,  
20 there is no indication, I have not had a  
21 discussion with Professor Barnett as to whether  
22 he had been bringing the file or not.

23 I had no idea that you were expecting  
24 him to bring the file at this point in time in

1 light of your compliance with your repeated  
2 request as it relates to all information.  
3 Whether Professor Barnett brings it or not, that  
4 would be his issue if he feels it is necessary.

5 MR. ROBINSON: Then we need to take a break  
6 and you need to make a phone call to make sure  
7 that he does bring it because the official  
8 notice of deposition for which there has been no  
9 agreement, even discussion on, the plaintiffs  
10 somehow avoiding that notice which required the  
11 original file to be brought here today by  
12 Mr. Ulmenstein and Mr. Barnett is in force.

13 We have traveled a long way.

14 MR. HARTMAN: Well --

15 MR. ROBINSON: And one of the things I  
16 wanted to do was see the original file so I can  
17 compare it with the file that was provided to  
18 make sure that there has been full compliance  
19 with the court order that compelled you to  
20 produce that file based upon your previous  
21 objections.

22 And I intended to ask this witness and  
23 Mr. Barnett -- excuse me, Professor Barnett  
24 questions about that original file. And I

1 cannot do it if it is not brought, so let's take  
2 a break and you can make a phone call.

3 MR. HARTMAN: Well, Paul, unfortunately  
4 because of your being late for the deposition  
5 through no fault of your own Professor Barnett  
6 will be in transit because he is scheduled to be  
7 deposed at 11:00 so he would already be in  
8 transit. There would be no way to get ahold of  
9 him.

10 If it becomes an issue, I will ask  
11 Mr. Ulmenstein at the end of his deposition if  
12 he can make -- go and get it and bring it back  
13 to us.

14 MR. ROBINSON: It is an issue. We can have  
15 someone from his office bring it down. I don't  
16 care if it is Professor Barnett necessarily.  
17 Someone needs to bring the file.

18 MR. HARTMAN: I don't know if he has it or  
19 he doesn't.

20 MR. ROBINSON: Well, let's take a break and  
21 call and have someone bring the original file  
22 please.

23 THE WITNESS: The original file isn't in its  
24 original form right now. It has been separated.

1 MR. ROBINSON: Well, that does not pertain  
2 to you, Mr. Ulmenstein. There is a formal,  
3 legal request for the original, all original  
4 materials to be brought here today.

5 THE WITNESS: Okay.

6 MR. ROBINSON: I put it in two separate  
7 notices of depositions, and all I am hearing  
8 right now are comments as to how that can be  
9 avoided.

10 MR. HARTMAN: No, I am not.

11 MR. ROBINSON: Well, then let's take a break  
12 and have you make a request of Triodyne, Inc.,  
13 to get that file down here now, please.

14 MR. HARTMAN: We are off the record.

15 THE VIDEOGRAPHER: Off the record at 10:33 a.m.

16 (Recess taken.)

17 MR. HARTMAN: For the record we had provided  
18 Mr. Robinson pursuant to the court order a  
19 complete copy of the entire file exclusive of  
20 those materials that were generated in the  
21 course of discovery in this matter between the  
22 parties such as deposition transcripts and  
23 discovery requests and responses provided by the  
24 defendant in this matter.

1           At no time has Mr. Robinson ever  
2       indicated to us that that was insufficient.  
3       We -- because of the voluminous nature of the  
4       transcripts and the documents that have been  
5       exchanged in this matter which, you know, are in  
6       the thousands of pages, we felt there would be  
7       no need to bring them today.

8           It was not requested of us as  
9       Mr. Robinson had indicated. He had sent us  
10      numerous correspondence prior to this asking for  
11      us to provide him with material all of which  
12      have been provided to him.

13           Mr. Ulmenstein and Mr. Barnett are here  
14      to testify as to the completeness of the  
15      documents and the completeness of the transfer  
16      of the file.

17           If Mr. Robinson chooses to question  
18      them on it, that's up to him. We have complied  
19      with all of his requests to this date. There  
20      has been no failure to comply with his request.  
21      It is only another one of his late moment  
22      attempts to try to obstacate the truth in this  
23      matter and delay this matter.

24           We will, however, as a courtesy to

1 Mr. Robinson, if he would like to come to  
2 Triodyne during his stay in Chicago, make  
3 available to him whatever he would like to see  
4 as it relates to this matter in the file in its  
5 original form.

6 MR. ROBINSON: Very quickly in response, I  
7 am not really sure what all of that meant. We  
8 had requested the original file be brought to  
9 both Mr. Ulmenstein's and Mr. Barnett's  
10 depositions so that we can check the accuracy of  
11 the production and see what documents are in the  
12 file as we know the court had to impose an order  
13 upon plaintiffs to have the plaintiff's counsel  
14 agree to produce any aspects of the file  
15 materials generated by Triodyne, Inc.

16 And to suggest that it wasn't requested  
17 when it was clearly spelled out in the notices  
18 of depositions and amended notices of  
19 depositions, I just do not understand it.

20 MR. HARTMAN: Well, subsequent -- I am  
21 sorry, I am sorry.

22 MR. ROBINSON: No, if you wanted to say  
23 something else, Mr. Hartman, please go right  
24 ahead.

1 MR. HARTMAN: Well, subsequent to the notice  
2 of depositions we supplied copies of the  
3 materials in lieu of bringing the voluminous  
4 files here.

5 MR. ROBINSON: Mr. Hartman --

6 MR. HARTMAN: It was never -- please.

7 MR. ROBINSON: -- have we ever had a  
8 discussion -- or did we ever have a discussion  
9 or agreement that you did not have to produce  
10 the original files here today?

11 MR. HARTMAN: No. But we did provide you  
12 complete copies, and you never made it known to  
13 us during our numerous conversations that you  
14 expected us to bring in all the deposition  
15 transcripts, all the discovery responses that  
16 you yourself were provided in this matter.

17 MR. ROBINSON: It makes no sense,  
18 Mr. Hartman. It was included in a formal  
19 request in the notice of deposition. That's as  
20 formal of a request as I can make.

21 You and I have had problems  
22 communicating in -- over the telephone. You  
23 constantly say that we have indicated things  
24 that we did not say.

1           The safest way to approach this  
2       litigation is to include it in a formal notice  
3       of deposition. We did that.

4           We had no discussion or agreement to  
5       waive any aspect of that formal notice of  
6       deposition. Your response does not make any  
7       legal sense.

8           MR. HARTMAN: Well, it does, Paul. Go  
9       ahead.

10       BY MR. ROBINSON:

11          Q. Sir, do you have a memory of every  
12       piece of paper that's in the original file that  
13       wasn't brought with you here today?

14          A. No, I did not.

15          Q. So you couldn't --

16          MR. HARTMAN: Paul, he is not on video.

17          MR. ROBINSON: Oh, I am sorry.

18          THE VIDEOGRAPHER: Back on the record at  
19       10:41 a.m.

20       BY MR. ROBINSON:

21          Q. Just to reask that, sir, do you have a  
22       memory of every piece of paper that's in the  
23       original file that you did not bring with you  
24       here today?

1           A.    I do not.

2           Q.    So there is no possible way for you to  
3   compare what was produced to us to say if this  
4   document is a group of documents which we will  
5   mark as Exhibit A to the transcript is, in fact,  
6   a complete copy of all the file materials from  
7   Triodyne?

8           A.    No, sir.

9                               (Whereupon, Ulmenstein  
10                              Deposition Exhibit No. A was  
11                              marked for identification.)

12   BY MR. ROBINSON:

13          Q.    So you heard the suggestion that I  
14   could ask you questions if I so chose to  
15   determine the accuracy of all file materials  
16   being previously produced to us and you agree I  
17   believe you just stated on the record that there  
18   is no way for us to do that today without the  
19   original file; is there, sir?

20          A.    I don't believe so, not for me to  
21   answer accurately.

22          Q.    When we took a break, did you call the  
23   office and ask that they bring down the original  
24   file materials?

1 A. I did not.

2 Q. And that's what we took the break for.

3 Why not?

4 A. I didn't take any break. Mr. Hartman  
5 took a break. You can ask him.

6 Q. I don't follow you, sir. We went off  
7 the record. We took a break from the  
8 deposition. I asked you folks to get the  
9 materials down here. What do you mean we didn't  
10 take a break -- you didn't take a break?

11 A. Mr. Hartman asked to take a break. I  
12 did not call anyone there. The file is in  
13 separate rooms, broken down in different places,  
14 and nobody else who is there can get the file  
15 together and bring it here.

16 Q. Okay, well, if you were unwilling or  
17 your -- is Mr. Hartman representing you here  
18 today?

19 A. No.

20 Q. Okay, well, I am asking you as the  
21 representative of Triodyne that is in front of  
22 me today to get me a complete -- I have already  
23 asked Mr. Hartman, he has refused and told me  
24 off the record that it would not be physically

1 possible to get the file down here to us before  
2 your deposition and before Mr. Barnett's  
3 deposition, so I am asking you to bring the file  
4 down here or have someone bring the file down  
5 here when your deposition is concluded so that  
6 we can at least have the opportunity to review  
7 it during Mr. Barnett's deposition which we  
8 expect to last the remainder of the day.

9 A. Okay.

10 MR. HARTMAN: Paul, I told you we would do  
11 that. I said that before we went off break. I  
12 said I would send him back so that he can pull  
13 the file together for you.

14 Now, I have a question for you that I  
15 think is important for the record, do you expect  
16 him to bring all the deposition transcripts and  
17 all the discovery materials?

18 MR. ROBINSON: Yes, I do. I want to see  
19 everything. I am troubled by the position that  
20 has been taken. I would like to see everything.

21 BY MR. ROBINSON:

22 Q. How big of a file is it?

23 A. I am not certain. There are separate  
24 Bankers Boxes.

1 Q. How many Bankers Boxes?

2 A. At least two, and there is another  
3 smaller box and just stacks of materials.

4 Q. How is the -- why is the file now  
5 segregated -- or I should say separated?

6 A. There are certain things that were  
7 reviewed by Professor Barnett to prepare I  
8 believe.

9 MR. ROBINSON: I am going to need my copy  
10 back, Mr. Hartman, of what you produced to us.

11 BY MR. ROBINSON:

12 Q. Say that again as to why it has been  
13 separated?

14 A. I believe that certain materials were  
15 reviewed by Professor Barnett to prepare.

16 MR. HARTMAN: And, Paul, I am going to  
17 instruct him that with regard to deposition  
18 transcripts that have been provided that you  
19 have a list of as well as the discovery  
20 responses that you have provided and we have  
21 identified that, I don't believe there is a need  
22 to compel this individual to carry them in.

23 MR. ROBINSON: Mr. Hartman, would you stop  
24 interrupting my deposition. We have a limited

1 amount of time. Please stop making your  
2 comments. You have made it clear through  
3 numerous comments that you do not want to bring  
4 that original file here. That troubles me.

5 MR. HARTMAN: I told you that we go could  
6 out there and get it. I told you before --

7 MR. ROBINSON: When are we going to go out  
8 there and get it?

9 MR. HARTMAN: This afternoon.

10 MR. ROBINSON: And take a break from Mr. --  
11 do you want to bring Mr. Barnett back in for  
12 another deposition? Would you agree to that?

13 MR. HARTMAN: No, not another deposition.  
14 We can continue it. And I also --

15 MR. ROBINSON: No, we have a certain period  
16 of time scheduled for today starting at 11:00,  
17 you have indicated he would stay for the entire  
18 seven hours and you would as well --

19 MR. HARTMAN: Right.

20 MR. ROBINSON: -- and now you want to  
21 interrupt that because you did not bring the  
22 file with you and Mr. Ulmenstein and Mr. Barnett  
23 did not bring the file with them to go out to  
24 the office and waste that time but you will not

1 agree to reschedule the remaining time for the  
2 deposition of Ralph Barnett.

3 MR. HARTMAN: No.

4 MR. ROBINSON: That's unreasonable,  
5 Mr. Hartman.

6 MR. HARTMAN: Paul, Paul, first of all, we  
7 have lost an hour of time because of your not  
8 being here.

9 MR. ROBINSON: We need not go into that.  
10 You have already mentioned it once. It has  
11 nothing to do with the current issue before the  
12 court.

13 MR. HARTMAN: Secondly, I have indicated to  
14 you at the very beginning of this that I would  
15 ask Mr. Ulmenstein to go out and get a cop --  
16 bring the original file in which you indicated  
17 that that was not suitable to you in the  
18 beginning, now you are saying it was. And --

19 MR. ROBINSON: No, it is not suitable  
20 because it doesn't give me the opportunity to  
21 ask Mr. Ulmenstein about them.

22 MR. HARTMAN: Well, when he comes back --

23 MR. ROBINSON: But if that's the only way I  
24 can get the original of it, then certainly,

1 certainly I want to get it. And if the only way  
2 I can see the actual original is to go out  
3 there, then I certainly want to go out there.

4 MR. HARTMAN: Well --

5 MR. ROBINSON: But I do not -- but I am  
6 going to reserve the right to bring Mr. Barnett  
7 back in so that I could ask him the questions  
8 that I would normally have asked.

9 MR. HARTMAN: It is going to be here.  
10 Mr. Ulmenstein --

11 MR. ROBINSON: That would be great.

12 MR. HARTMAN: If you want Mr. Ulmenstein, he  
13 will go out and get it.

14 MR. ROBINSON: Okay.

15 MR. HARTMAN: We are not bringing in  
16 deposition transcripts.

17 MR. ROBINSON: You can bring in whatever it  
18 is you want, Mr. Hartman. The notice required  
19 you to produce everything. If you don't want to  
20 comply with that and comply with my repeated  
21 requests here and continue to say that you don't  
22 want to bring any portions of the file, that is  
23 your prerogative. That is not the way we do  
24 things in the Western District Federal Court,

1 but if you want to make that decision, you have  
2 made it very clear that that's the decision you  
3 are making.

4 MR. HARTMAN: Fine.

5 MR. ROBINSON: So please let me continue  
6 with this deposition.

7 MR. HARTMAN: Go ahead.

8 BY MR. ROBINSON:

9 Q. Did you ever make any notes at any time  
10 during Triodyne's retention regarding any issue  
11 during your investigation?

12 A. Not personally, not that I can  
13 remember.

14 Q. Not one note?

15 A. It wasn't my case to begin with.

16 Q. I just want you to testify under oath  
17 whether you made even one note.

18 A. I can't be certain.

19 Q. You can't be certain?

20 A. No.

21 Q. Would the -- would the -- if you made  
22 such a note, it would be in the original file  
23 materials I would assume --

24 A. Or disposed of.

1 Q. -- or would it not be? I am sorry?

2 A. Or disposed of.

3 Q. Do you recall disposing of anything  
4 from the original file?

5 A. No, I don't recall disposing of  
6 anything.

7 Q. Why do you say that it would either be  
8 in the original file or disposed of? Why would  
9 you possibly dispose of anything?

10 A. If it was just a -- something on a  
11 scratch sheet of paper it wouldn't matter.

12 Q. It wouldn't matter to whom, sir?

13 A. It wouldn't matter to myself or  
14 Professor Barnett or for the matter at hand.

15 Q. Do you know of any materials that have  
16 been disposed of, sir?

17 A. I do not.

18 Q. Have you ever had any discussions with  
19 anyone about disposing of any documents?

20 A. No.

21 Q. I just want to make sure you answered  
22 this question and understood my question, did  
23 you make -- do you have any memory today, sir,  
24 of making any handwritten notations regarding

1 any aspect of this case?

2 A. I can't recall.

3 Q. What I'd like to do since we have you  
4 on the record and since the original file was  
5 not brought here was to look into that issue, to  
6 see if any -- if you did make any notes --

7 A. Okay.

8 Q. -- and if you did dispose of any notes  
9 or if Mr. Professor Barnett disposed of any  
10 notes, and then please let Mr. Hartman know  
11 about that so that we can have a response in  
12 writing to that request; okay?

13 A. Certainly.

14 Q. We would like that to be notarized as  
15 well please.

16 Have you inspected the press brake at  
17 issue in this case?

18 A. I was present at the inspection.

19 Q. Where was the press brake located at  
20 that time?

21 A. The press brake was located in a  
22 machine shop. I am not exactly certain as to  
23 the location. Mr. Hartman brought us there to  
24 inspect the press brake.

1 Q. And who was present during that  
2 inspection?

3 A. Mr. Hartman, Professor Barnett and  
4 myself.

5 Q. Was Tina Lindquist present?

6 A. She was not.

7 Q. Did -- were you present during all of  
8 Professor Barnett's discussions with Tina  
9 Lindquist, or do you know of him discussing  
10 things with her separately away from you?

11 A. I believe I was present for that  
12 15-minute meeting I previously discussed. I am  
13 not certain as to any other discussions he might  
14 have had with her by phone or otherwise, but --

15 Q. Has --

16 A. -- for that one discussion I believe I  
17 was there the whole time.

18 Q. I apologize for interrupting. If I  
19 interrupt you at any time, please let me know  
20 that, and I will give you all the time that you  
21 need to respond.

22 Has Professor Barnett ever indicated to  
23 you that he has had any type of other  
24 conversations with Tina Lindquist when you were

1 not present?

2 A. He has not.

3 Q. Has -- have you spoken separately with  
4 Mr. Hartman outside of that 15-minute meeting?

5 A. Certainly, yes.

6 Q. About what issues?

7 A. About anything he desired to be done  
8 with the case. I -- as the project engineer I  
9 was basically the contact to -- if he wanted  
10 something from us or if he was going to be  
11 sending something to us, he would -- they would  
12 give me a call and let me know.

13 Q. Tell me what actual conversations you  
14 recall occurring between you and Mr. Hartman. I  
15 don't have your notes. I don't have any file  
16 materials here to know so unfortunately I have  
17 to ask you what you remember.

18 MR. HARTMAN: You have all the file  
19 materials.

20 MR. ROBINSON: I don't understand --  
21 Mr. Hartman, please stop interrupting the  
22 deposition. We do not have all the file  
23 materials as was gone over ad nauseam earlier.

24 MR. HARTMAN: You do you have all the file

1 materials.

2 MR. ROBINSON: Okay.

3 MR. HARTMAN: You have copies of all the  
4 file materials, just for the record.

5 BY MR. ROBINSON:

6 Q. What conversations do you recall  
7 occurring with Mr. Hartman?

8 A. In total?

9 Q. Yes, sir, in total. First of all, how  
10 many do you recall there being?

11 A. I have probably spoken to Mr. Hartman  
12 perhaps a dozen times by phone or in person.

13 Q. Do you keep separate billing records  
14 from Professor Barnett, or are they included in  
15 the same invoice?

16 A. They should be included. Any billing  
17 that goes through the client, my time should be  
18 on there the same.

19 Q. Who -- who sends out the billing?

20 A. I am not exactly certain as to who was  
21 in charge of that.

22 Q. Okay, yeah, so back to our initial  
23 question, what conversations do you recall  
24 having with Mr. Hartman during this dozen or so

1 times?

2 A. I am going back from right now, we  
3 spoke personally out here in the lobby just  
4 socially last night. He came into town  
5 yesterday evening, and he told me -- he gave me  
6 a quick preparation for how a deposition works,  
7 what to expect, and to just tell the truth.

8 Q. Where was this meeting?

9 A. This was at Triodyne, and we then had a  
10 social dinner.

11 Q. You had a social what?

12 A. Dinner together.

13 Q. What substantive conversations did you  
14 have regarding the opinions that you and  
15 Professor Barnett have set out in your letter,  
16 your report?

17 A. I don't recall having discussions with  
18 Mr. Hartman about any opinions aside from him  
19 asking for things to be clarified for  
20 Professor Barnett, but I can't even recall what  
21 issues those were.

22 Q. Well, what did you talk about during  
23 those previous 12 conversations, approximately  
24 dozen conversations?

1           A.    What materials were going to be sent to  
2    us, what materials he had, what he needed from  
3    us in terms of the copy of the file that has  
4    been mentioned over and over again. I can't  
5    recall what else I have discussed with  
6    Mr. Hartman.

7           Q.    What do you do in your role as the  
8    project engineer?

9           A.    Normally I would be the client contact,  
10   I would -- I -- I might receive the new case  
11   call when it first came in, at which point I  
12   take down information as to the person who is  
13   calling us, their case that they have that they  
14   would like us to discuss with them, and I would  
15   make notes on this and --

16          Q.    You would make notes on what, sir?

17          A.    On the new case call that came in.

18          Q.    Where would you make those notes?

19          A.    On a pad of paper.

20          Q.    And where -- that pad of paper -- those  
21   notes haven't been produced. Where would those  
22   be?

23          A.    Again, I was not the original engineer  
24   on this case, I was not the original engineer on

1 this case, so there would be no opening notes  
2 from myself.

3 Q. Who was the opening engineer?

4 A. Peter Poczynok.

5 Q. Where are his notes?

6 A. I have no idea. He has left the firm.

7 Q. Would he also -- is that the protocol  
8 at Triodyne for someone to make those  
9 preliminary notes so you can open up a case if  
10 you will?

11 A. There is no protocol as to what exactly  
12 you need to do. You might just take down a name  
13 and a number and call them back later with  
14 Professor Barnett there.

15 Q. Were you involved with putting together  
16 a copy of what was sent to us on March 27th in  
17 response to the court order being a complete  
18 copy of the file materials less the deposition  
19 transcripts and --

20 A. Yes, less the list of that material,  
21 yes. Sorry for interrupting.

22 Q. That's okay. Did you try to locate any  
23 notes that would have been generated by the  
24 initial project engineer?

1           A.    I went directly to the file that we had  
2           on hand and copied everything that was in it.

3           Q.    Did you -- spell the last name of the  
4           initial project engineer.

5           A.    Poczynok, P-O-C-Z-Y-N-O-K, I believe.  
6           It should be in the copy of the file there.

7           Q.    And where did that individual go?

8           A.    He joined a firm by the name of  
9           Arca Incorporated. It is an engineering firm  
10          here in Chicago.

11          Q.    Did you make any contact with Mr. -- is  
12          it Mr. Poczynok?

13          A.    Yes.

14          Q.    -- Mr. Poczynok to locate any originals  
15          of their -- of his notes so that we could have  
16          those and there could be compliance with the  
17          court order?

18          MR. HARTMAN: I am going to object to the  
19          form of the question.

20          BY MR. ROBINSON:

21          Q.    You can answer, sir.

22          A.    I was requested to provide a copy of  
23          the file to Mr. Hartman.

24          Q.    Sir, my question was very simple. Did

1 you contact Mr. Poczynok to get whatever he had?

2 A. The end of your question was not very  
3 simple.

4 Q. Are you having any problems  
5 understanding me?

6 A. No.

7 Q. Okay, would you please answer the  
8 question. Did you make any contact with  
9 Mr. Poczynok to find out if he had any original  
10 file materials?

11 A. I did not.

12 Q. All right. Did you know there was a  
13 court order compelling Mr. Hartman and Triodyne  
14 to produce a copy of all of their file  
15 materials?

16 A. I did not.

17 Q. Mr. Hartman did not tell you about  
18 that?

19 A. I had no idea as to exactly why I was  
20 providing the file materials.

21 Q. Did Mr. Hartman tell you that he  
22 initially refused to give us the file materials  
23 from Triodyne?

24 MR. HARTMAN: I am going to object to the

1 form of that question in that there was a  
2 dispute as to what you were entitled to and not  
3 we went to the court, the court indicated that  
4 you were correct --

5 MR. ROBINSON: Please no speaking  
6 objections. Please, let's just make the  
7 objection.

8 MR. HARTMAN: Paul --

9 MR. ROBINSON: Do you have an objection to  
10 the form? I have limited time here. I would  
11 appreciate if we can move on.

12 MR. HARTMAN: Paul, next time we have  
13 limited time you should make sure you are on  
14 time.

15 MR. ROBINSON: That's the third time you  
16 have mentioned it had, Mr. Hartman.

17 MR. HARTMAN: Well --

18 MR. ROBINSON: The issue on the table is you  
19 making a speaking objection. It is not about my  
20 plane being late.

21 MR. HARTMAN: Quit talking about limited  
22 time.

23 MR. ROBINSON: No.

24 MR. HARTMAN: We have limited time in that I

1 am here for you as long as you need either of  
2 these witnesses subject to the provisions of the  
3 Western District of Pennsylvania.

4 BY MR. ROBINSON:

5 Q. Did Mr. Hartman ever explain to you  
6 that he had refused to produce all of the file  
7 materials that were generated by Triodyne?

8 A. No, sir.

9 Q. Do you have any explanation as to why  
10 Mr. Hartman would refuse to produce all of the  
11 file materials by -- prepared by Triodyne at any  
12 time?

13 A. I can't explain anything like that.

14 Q. How did -- are you a professional  
15 engineer?

16 A. I am not.

17 Q. Is Professor Barnett a professional  
18 engineer?

19 A. I don't believe so.

20 Q. Are you attempting to become a  
21 professional engineer?

22 A. I will once -- there is a time that you  
23 have to be working in a profession before you  
24 can become one.

1 Q. And I didn't even ask you much  
2 background. What is your date of birth, sir?

3 A. January 2nd, 1976.

4 Q. So you are 30 years old.

5 A. Yes, sir.

6 Q. Are you from the Chicago area?

7 A. Yes.

8 Q. Married?

9 A. No.

10 Q. How long have you worked with Triodyne?

11 A. 11 years this month.

12 Q. So since you were 19?

13 A. Yes.

14 Q. What position did you start out at  
15 there?

16 A. Lab technician, general laborer.

17 Q. Do you have a college degree?

18 A. Yes.

19 Q. And did you obtain that degree while  
20 you were working at Triodyne?

21 A. Yes, sir.

22 Q. Where is that degree from?

23 A. Illinois Institute of Technology.

24 Q. So were you a student of

1 Professor Barnett's?

2 A. I did have him as a professor for one  
3 of my classes.

4 Q. Is he still teaching there?

5 A. Every other semester or so.

6 Q. And does he teach a full course, or  
7 does he come in on a seminar type basis?

8 A. It is a full course.

9 Q. And what is the course that he -- that  
10 he teaches now?

11 A. The last course that I have known him  
12 to teach is design for safety on machines, I  
13 believe is the course title.

14 Q. Which course did you have with him?

15 A. That was the course.

16 Q. Design for safety --

17 A. In machines.

18 Q. -- in machines.

19 A. I believe that to be the title. I  
20 can't be sure though.

21 Q. Did Professor Barnett ever teach you  
22 when you were a student of his that a foot  
23 pedal, that a foot control that does not contain  
24 a gate is defective?

1           A.    I don't remember any discussion of foot  
2   controls in the class.

3           Q.    In all of your years at Triodyne has  
4   Professor Barnett ever taught you that a foot  
5   control does not have a gate renders the foot  
6   control defective?

7           A.    I don't remember working on any foot  
8   control matters before this one.

9           Q.    Please listen to my question.

10          A.    Pardon me.

11          Q.    At any time during your involvement  
12   with Triodyne in the past 19 years --

13          A.    11, pardon me.

14          Q.    I am sorry.

15          A.    11.

16          Q.    11, you were 19. My apologies.

17                In the past 11 years has  
18   Professor Barnett ever taught you that a foot  
19   control that lacks a gate is defective?

20          A.    Only in this case.

21          Q.    Only in this case.

22                Have you ever heard of him giving that  
23   opinion in any -- how old is Professor Barnett?

24          A.    I can't be certain. I believe he is in

1 his early 70's.

2 Q. Have you ever heard of  
3 Professor Barnett giving that opinion in any  
4 other case until this one?

5 A. I have no other idea as to what other  
6 opinions he has rendered.

7 Q. Please listen to my question. Have you  
8 ever heard of Professor Barnett ever giving the  
9 opinion at any time before this case that a foot  
10 pedal -- excuse me, that a foot control does not  
11 have a gate is defective?

12 A. I haven't heard anything.

13 Q. Have you ever heard any engineer  
14 provide that opinion?

15 A. No, sir.

16 Q. Have you ever known of any governmental  
17 entity give any type of information to the  
18 public or to the press industry that a foot  
19 control that does not have a gate is defective?

20 A. No, sir.

21 Q. Have you ever heard of  
22 Professor Barnett teaching that the inclusion of  
23 a gate on a foot control adds a danger to the  
24 gate -- or excuse me, adds a danger to the foot

1 control?

2 A. I have heard this from him in regards  
3 to a punch press.

4 Q. So the only thing you have ever heard  
5 him say -- is it true that the only thing you  
6 have ever heard him say relative to the  
7 inclusion of a gate on a foot control is that it  
8 adds a danger?

9 A. No.

10 Q. Okay. What else have you heard him say  
11 outside of this case relative to the inclusion  
12 of a gate on a foot control?

13 A. I am sorry if I answered incorrectly  
14 earlier. There is no addition of a danger  
15 there. He has never taught that it adds a  
16 danger to put the gate on.

17 Q. Have you ever read his publications  
18 where he specifically said that?

19 A. It doesn't add a danger. It increases  
20 as you -- if you read the publications, that  
21 chart that has the foot switches on there, it  
22 increases from one side to the other, the  
23 tendency to ride the pedal on a punch press.

24 Q. What does it increase?

1           A.    The tendency to ride the peddle.  It  
2           doesn't introduce riding the pedal.  That's what  
3           the -- I believe the paper states, and you can  
4           question Professor Barnett about that.

5           Q.    No, I want to ask you about it.  Have  
6           you read that article?

7           A.    I have read that paper.

8           Q.    So your understanding is that it  
9           increases the danger associated with riding the  
10          pedal?

11          A.    No, it increases the tendency to ride  
12          the pedal.

13          Q.    Do you consider riding the pedal to be  
14          a danger?

15          A.    I have no opinion on that.

16          Q.    Do you consider riding the pedal to be  
17          a favored method of using a foot control on  
18          either a power press or a press brake?

19          A.    I have no opinion on that.  I have  
20          never worked on such.

21          Q.    You signed off on the March -- excuse  
22          me, the February 13, 2006, report --

23          A.    Yes, sir --

24          Q.    -- that was provided in this case; did

1     you?

2           A.    -- I did.

3           Q.    And this report concludes that -- let  
4     me just make sure that I have your signature.

5           A.    You do.

6           MR. HARTMAN: And while you are looking at  
7     that, for the record I want to indicate that you  
8     were advised, Mr. Robinson, that Mr. Ulmenstein  
9     had no input into the formulation of the  
10    opinions, he is not giving any opinion testimony  
11    in this matter, prior to this deposition. In  
12    fact, it was in writing at your request.

13          MR. ROBINSON: You are wasting the time  
14    involved with the deposition, Mr. Hartman. I  
15    see now that it is your goal, and we will take  
16    it up with the court later.

17          MR. HARTMAN: Paul, I am not wasting --

18          MR. ROBINSON: Please, there is no need to  
19    have the conversations any longer.

20          MR. HARTMAN: I am going to make my  
21    objections as I see fit.

22          MR. ROBINSON: That wasn't even an  
23    objection.

24          MR. HARTMAN: And I am going to clarify the

1 record every time you try to distort it. It is  
2 not wasting time. It is representing my client.

3 BY MR. ROBINSON:

4 Q. Is this your signature, Mr. Ulmenstein?

5 A. It is.

6 Q. And by signing it -- first of all, did  
7 you read this before you signed it?

8 A. Yes.

9 Q. Did you attempt to include in any  
10 portion of this letter or in any other type of  
11 writing what opinions you were supporting that  
12 are set forth in the document you signed and  
13 which ones you were not supporting?

14 A. I signed the document because I  
15 prepared certain sections of it. I did not  
16 prepare any opinions nor intend to.

17 Q. And my question was have you  
18 brought any type -- when I received this, it was  
19 signed by two individuals. I have no way of  
20 knowing that -- what you are now saying is that  
21 you didn't subscribe to any of these opinions.

22 I am saying did you prepare any type of  
23 letter or any type of memoranda that would  
24 indicate which comments that were included in

1 this February 13, 2006, letter you were  
2 supporting and which ones you were not  
3 supporting?

4 A. I have not.

5 Q. What portion of this letter is your  
6 thinking and your work?

7 A. My work was the first section of  
8 materials reviewed, the accident description --

9 Q. Did you -- by the way, did you read all  
10 of the materials that are under the heading  
11 Materials Reviewed?

12 A. I have read most of those materials,  
13 yes.

14 Q. Have you read all of them was my  
15 question.

16 A. Personally, no.

17 Q. Has anyone read all of them?

18 A. I can't answer that question.

19 Q. Do you know of anyone at Triodyne that  
20 has read all of the materials that are included  
21 under the heading Materials Reviewed?

22 A. I believe that Professor Barnett has  
23 reviewed all of those materials.

24 Q. Has he told you that?